IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5267 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHGAR VIRGAR GOSAI

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner

MS HARSHA DEVANI, Ld.AGP for Respondent No.1 to 3.

MR PF MAKWANA for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. This petition has been filed questioning the order dated 20th June, 1995, Annexure `A' passed by the Joint Secretary, Food and Civil Supplies Department, Government of Gujarat. According to the averments made in the petition, several representations were made by the

villagers to allot a fair price shop in the village Baladiya. Thereafter an advertisement was issued on 10th August, 1993, in the local Gujarati daily paper `Sandesh' inviting applications from the persons desirous of running a fair price shop at village Baladiya. It was mentioned in the said public notice that the applications should be filed on or before 16th August, 1993, in the office of Mamlatdar. Within the stipulated time, no application was received in the office of the Mamlatdar. The petitioner has stated that he went to the office of Mamlatdar for filing the application for the fair price shop on 16th August, 1993, but he was informed that because of heavy work with the staff of the office of the Mamlatdar, nobody would be in a position to receive the application, therefore, the petitioner was required to come on next day i.e. 17th August, 1993, assuring him that his application will be entertained on next day. Thus the petitioner again went to the office of the Mamlatdar and submitted his application on 17th August, 1993. The respondent No.4 had also applied for the fair price shop after 9 days beyond the prescribed limit. Certain other persons also gave their applications for that fair price shop. The Taluka Level Committee recommended the names of two persons for allotment of the fair price shop. Preference was given to the respondent No.4 as he belongs to Scheduled Caste community. The name of the second person is the petitioner as he belongs to Other Backward Class. The District Level Committee recommended the name of the petitioner as his application was filed beyond one day while the application of the respondent No.4 was entertained 9 days after the prescribed time. The District Supply Officer, considering the facts and circumstances, allotted the fair price shop to the petitioner.

2. Being aggrieved by the said order of the District Supply Officer, the respondent No.4 filed an appeal before the District Collector. The District Collector after going through the material on record did not think it proper to interfere with the allotment of the fair price shop to the petitioner, as his name was recommended by the District Level Committee.

3. Being aggrieved by the order of the District Collector, the respondent No.4 had filed a revision application before the Secretary, Food & Civil Supply Department, Government of Gujarat. After hearing the parties and considering the facts and circumstances, the Jt.Secretary, Food and Civil Supply Department, passed an order dated 28th June, 1995, whereby the orders passed by the District Supply Officer and Collector were reversed

and the allotment made in favour of the petitioner was cancelled, and directed the District Supply Officer to advertise again afresh for the allotment of the fair price shop and allot the same according to the rules and regulations within a period of three months. Meanwhile he was also directed to attach the card holders to the fair price shop of a nearest place on the ground that the authority concerned was not proper to entertain the applications for allotment which were not received within the time prescribed. Secondly, the district authority was required to give preference to a person belonging to Scheduled Caste and Scheduled Tribe in accordance with the guidelines framed by the State Government. The allotment made to the petitioner was not falling within the two guidelines stated above. Hence the allotment made in favour of the petitioner was not legal and justified and the same was cancelled.

4. The learned Counsel appearing for the petitioner submitted that the petitioner had gone to the Mamlatdar's office to submit his application on the last day i.e. 16th August, 1993, but due to heavy burden of work, the office of the Mamlatdar requested the petitioner to come on next day and to submit the same, there would be no difference of one day in submitting the application, and the application will be entertained and will be taken as such on the next day. The petitioner went again to the office of Mamlatdar and submitted his application and that was entertained. Nodoubt the application of the petitioner was entertained on the next day, while the application of the respondent No.4 was received in the office of the Mamlatdar after 9 days and respondent No.4 was not entitled for the allotment of the fair price shop in view of the recommendation made by the Taluka Level Committee and District Level Committee. The Government had taken different view only for technical ground that the application of the petitioner was received late by one day after the prescribed time. The petitioner had invested his money in opening the fair price shop and this order was passed about after one and half year and this Court has protected the right of the petitioner by way of interim order. As such this Court should not interfere on the basis of the order passed by the Joint Secretary to settle the matter which has been already settled.

5. Heard the learned Counsel for the parties and perused the relevant papers on record and considered the same carefully. It is a case in which admittedly the application of the respondent No.4 as alleged by the petitioner was received beyond the limit prescribed by

the notification itself. Secondly, the State Government has taken view that the authority is required to give preference according to the guidelines framed by the Government for this purpose. The respondent No.4 was entitled for the preference which was recommended by the Taluka Level Committee. Whenever any thing has to be done which is required under the rules and regulations in a particular manner that should be done in the same manner and not otherwise. In the present case, the office of the Mamlatdar was not entitled to receive the applications beyond the time limit fixed by the notification unless it was extended by the authority concerned. The District Supply Officer was not to entertain the application which was not received within the time limit. Whenever any limitation is provided by statute or by any rules and regulations that should be followed. In the present case that has not been followed. According to the State Government, the discretion has not been exercised by the District Supply Officer in accordance with the guidelines made by the State Government in allotment of the fair price shop. Hence, the order of the State Government cancelling the allotment to the petitioner does not appear to be illegal. I do not find any illegality or any error on the face of the record calling for interference by this Court under Article 226 of the Constitution. Accordingly, this petition is dismissed. Rule is discharged.

6. Learned Counsel for the petitioner requested to extend the relief granted by this Court. I do not find any good reason to extend the same. Accordingly the request made by the learned Counsel for the petitioner is rejected.

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